

**STATE WATER CONTROL BOARD ENFORCEMENT ACTION
SPECIAL ORDER BY CONSENT
ISSUED TO
MR. H. N. BARNHART
FOR
CLOVER MEADOW DAIRY FARM
CAFO GENERAL PERMIT NO. VPG120013**

SECTION A: Purpose

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15(8a) and (8d) by the Board to Mr. H. N. Barnhart, for the purpose of resolving certain violations of environmental law and/or regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. “Va. Code” means the Code of Virginia (1950), as amended.
2. “Board” means the State Water Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 62.1-44.7 and 10.1-1184.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 1183.
4. “Director” means the Director of the Department of Environmental Quality.
5. “Order” means this document, also known as a Consent Order.
6. “Mr. Barnhart” means Mr. H. N. Barnhart.
7. “WCRO” means the West Central Regional Office of DEQ, located in Roanoke, Virginia.

8. "Permit" means the Virginia Pollution Abatement General Permit for Confined Animal Feeding Operations, 9 VAC 25-192-10 through 9 VAC 25-192-70.
9. "SEP" means a supplementary environmental project as described at Va. Code § 10.1-1186.2.

SECTION C: Findings of Fact and Conclusions of Law

1. Mr. Barnhart owns and operates the Clover Meadow Dairy Farm (hereinafter "Farm"), a dairy operation in Franklin County, Virginia. A map of the Farm is attached for reference as Appendix C. The Farm is regulated under CAFO General Permit No. VPG120013. Stormwater runoff and manure from the confinement area at the dairy is collected in a large concrete storage tank (labeled "Manure Tank #1" in Appendix C). Manure is pumped out of the tank on a regular basis for land application. Overflow from the tank can be released into a pit (labeled "Roadside Access Pit" in Appendix C) adjacent to the tank. Stormwater from a state road adjacent to the dairy passes through the pit before entering a drainpipe that runs under the road. The drainpipe then discharges into a ditch that eventually reaches the North Fork of the Blackwater river.
2. On August 27, 2002, the Department received a pollution complaint regarding a fish kill on the North Fork of the Blackwater river near the Farm. The Department investigated the complaint on August 28, 2002. Results of the investigation indicated that the fish kill was caused by discharge of cow manure and feed from the Farm in combination with high temperatures and low stream levels caused by prolonged drought. The discharge occurred because the Manure Tank #1 overflowed into the Pit during a sudden thunderstorm. The high volume of stormwater flow from the state road drainage ditch then conveyed the manure in the Pit to the North Fork of the Blackwater River. The normal storage capacity of Manure Tank #1 is believed to have been exceeded by that single storm because a pipe that ordinarily diverts stormwater from the culvert before it reaches the confinement area was plugged. If the culvert diversion intake pipe had not been plugged, the capacity in the manure storage tank should have been sufficient for the storm.
3. Section 62.1-44.5 of the Code prohibits discharge of pollutants unless authorized by a permit issued by the Board. CAFO General Permit No. VPG120013 does not authorize discharges of manure from the Farm.
4. Total fish replacement cost for the August 2002 fish kill as calculated by the Department of Game and Inland Fisheries is \$471.44. The total investigative cost of DEQ is \$374.69.
5. A similar fish kill occurred in June 2000 at approximately the same location. Department staff believes that a discharge from the Farm caused the June 2000 fish kill. In response to that incident, Mr. Barnhart installed several agricultural best management practices that were intended to prevent future fish kills.
6. DEQ staff visited the Farm on October 9, 2002. As of that site visit, Mr. Barnhart was in the process of unplugging the stormwater diversion pipe. After the diversion pipe was unplugged, Manure Tank #1 was able to maintain freeboard throughout a period of steady rain from October

26-28, 2002.

7. Inspection results at the Farm from 2000-2002 have indicated that the Farm has been consistently in compliance with Permit requirements.

SECTION D: Agreement and Order

1. Accordingly, the Board, by virtue of the authority granted it in Va. Code §62.1-44.15(8a) and (8d), and after consideration of the factors set forth in Va. Code § 10.1-1186.2, orders Mr. Barnhart, and Mr. Barnhart agrees, to perform the actions described below and in Appendices A and B of this Order. In addition, the Board orders Mr. Barnhart, and Mr. Barnhart voluntarily agrees to pay:
a) a civil charge of \$3,500.00 in settlement of the violations cited in this Order, b) fish replacement costs of \$471.44, and c) DEQ's investigative costs of \$374.69.
2. Mr. Barnhart shall pay \$350 of this civil charge within 30 days of the effective date of this Order. Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia". Payment shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

Payment shall include Mr. Barnhart's Social Security Number and shall state that it is being tendered in payment of the civil charges assessed under this Order.

3. For the fish replacement costs, Mr. Barnhart shall within 30 days of the effective date of this Order submit a check, certified check, money order, or cashier's check for \$471.44, payable to "Treasurer of Virginia, Department of Game and Inland Fisheries". For the DEQ investigative cost, Mr. Barnhart shall within 30 days of the effective date of this Order submit a check, certified check, money order, or cashier's check for \$374.69, payable to "Treasurer of Virginia, Department of Environmental Quality". All payments shall be sent to:

Receipts Control
Department of Environmental Quality
Post Office Box 10150
Richmond, VA 23240

4. \$3,150.00 of this civil charge shall be satisfied upon completion of the SEP specified in Appendix B herein. The total final net project costs of the SEP shall not be less than \$3,150.00.
5. The Department has the sole discretion to: a) authorize any alternate SEP proposed by Mr. Barnhart; and b) determine whether a SEP, or alternate SEP, has been completed in a satisfactory manner.

6. Should the Department determine that the SEP, or alternate SEP, has not been completed in a satisfactory manner, the Department shall notify Mr. Barnhart of such determination in writing. Within 30 days of such notification, Barnhart shall pay the amount specified in Paragraph D.4 above in accordance with the procedures specified in Paragraph D.2 above.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Mr. Barnhart, for good cause shown by Mr. Barnhart, or on its own motion after notice and opportunity to be heard.
2. This Order only addresses and resolves those violations specifically identified herein. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (a) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (b) seeking subsequent remediation of the facility as may be authorized by law; or (c) taking subsequent action to enforce this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, Mr. Barnhart admits the jurisdictional allegations, factual findings, and conclusions of law contained herein.
4. Mr. Barnhart declares that he has received fair and due process under the Administrative Process Act, Va. Code §§ 2.2-4000 *et seq.* and the State Water Control Law, Va. Code § 62.1-44.2 *et seq.* and waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or judicial review of, any action taken by the Board to enforce this Order.
5. Failure by Mr. Barnhart to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
6. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
7. Mr. Barnhart shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Mr. Barnhart shall show that such circumstances were beyond his control and not due to a lack of good faith or diligence on his part. Mr. Barnhart shall notify the WCRO Regional Director in writing when circumstances are anticipated to occur, are occurring, or

have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth: (a) the reasons for the delay or noncompliance; (b) the projected duration of any such delay or noncompliance; (c) the measures taken and to be taken to prevent or minimize such delay or noncompliance; and (d) the timetable by which such measures will be implemented and the date full compliance will be achieved. Failure to so notify the WCRO Regional Director within twenty-four hours of learning of any condition above, which Mr. Barnhart intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

8. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
9. This Order shall become effective upon execution by both the Director or his designee and Mr. Barnhart. Notwithstanding the foregoing, Mr. Barnhart agrees to be bound by any compliance date that precedes the effective date of this Order.
10. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to Mr. Barnhart. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Mr. Barnhart from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
11. By his signature below, Mr. Barnhart voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2003.

Robert G. Burnley, Director
Department of Environmental Quality

Mr. Barnhart voluntarily agrees to the issuance of this Order.

By: _____

Commonwealth of Virginia

City/County of _____

The foregoing document was signed and acknowledged before me this _____ day of

_____, 2003, by Mr. H. N. Barnhart.

Notary Public

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Consent Order - Mr. H. N. Barnhart

My commission expires: _____

APPENDIX A
SCHEDULE OF COMPLIANCE

1. Not later than July 1, 2003, Mr. Barnhart shall correct the deficiencies described in Section C of this Order by: a) routing the stormwater discharge originating from the state road directly to the drain pipe running under the road, and b) filling in the Road Access Pit identified in Appendix C.
2. Mr. Barnhart shall repair, clean out, or otherwise properly maintain all stormwater diversion pipes and ditches at the Farm as necessary to ensure that stormwater flows are directed through the culvert above the dairy barns, away from the confinement area.
3. After the SEP described in Appendix B of this Order is completed, Mr. Barnhart shall apply manure from the manure tank through the conveyance pipe to the riparian buffer described in SEP only as specified in the SEP plan. For 12 months after the effective date of this Order, Mr. Barnhart shall report any such application to the Department by phone within 24 hours and in writing within 5 days after the application.

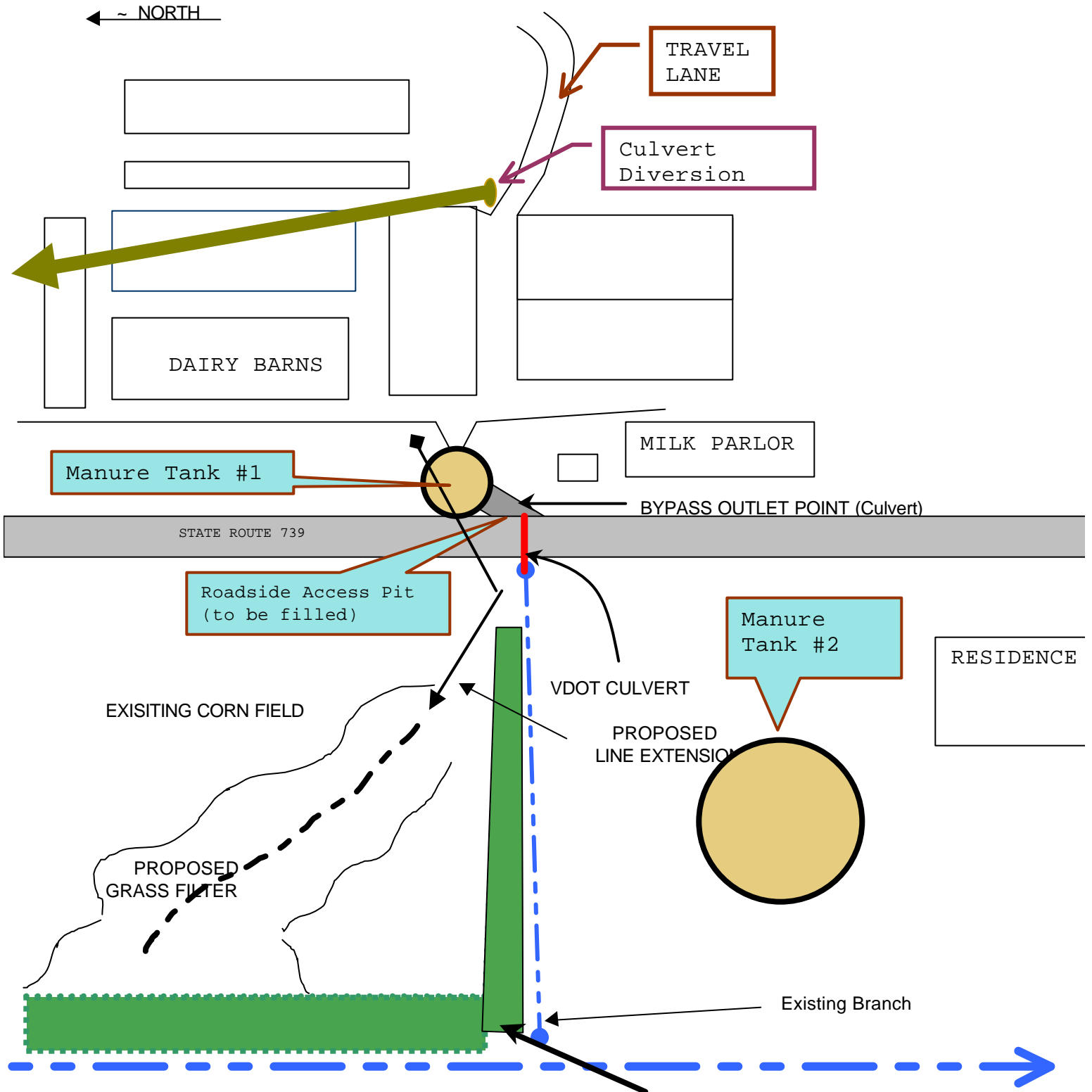
APPENDIX B
SUPPLEMENTAL ENVIRONMENTAL PROJECT

1. As a SEP, Mr. Barnhart shall construct a riparian buffer in the field shown in Appendix C. Mr. Barnhart shall also construct a bypass conveyance adjacent to Manure Tank #1, shown in Appendix C to allow application of stormwater to the riparian buffer. The buffer shall be graded so that it will have adequate filtering capacity. Mr. Barnhart shall submit written specifications for construction of the buffer ("SEP Plan") to WCRO for review and approval not later than 30 days after the effective date of this Order. The SEP Plan shall clearly define the circumstances under which stormwater from the bypass may be applied to the riparian buffer. The Department will approve, or approve and modify, the SEP Plan in accordance with applicable regulations. Mr. Barnhart shall comply with the approved SEP Plan.
2. The SEP shall be completed not later than July 1, 2003.
3. Mr. Barnhart certifies that he has not commenced performance of the above SEP prior to the identification of the violations cited in this Order or prior to his signature of this Order and that he is under no legal obligation to perform any of the actions required by the SEP.
4. The final net cost of the SEP shall not be less than \$3,150.00. In the event that the final net cost is less than this amount, Mr. Barnhart shall pay the difference in accordance with Section D of this Order to the Commonwealth of Virginia, unless otherwise agreed to by the Department. Net costs shall mean the costs of the projects minus any tax savings, grants, and first-year operation cost reductions or other efficiencies.
5. Mr. Barnhart acknowledges that he is solely responsible for completion of the SEP specified above. Any transfer of funds, tasks, or otherwise by Mr. Barnhart to a third party, shall not relieve Mr. Barnhart of his responsibility to complete the SEP.
6. Mr. Barnhart shall submit written verification to the Department of the completion of the project, as well as of the final overall and net costs of the SEP within 30 days of the project completion date. Such verification should include any invoices, proofs of payment, itemized statements or similar documentation that confirms project costs.
7. Documents to be submitted to the Department pursuant to this Order, other than the payments described in Section D of this Order, shall be sent to:

Jim Scott
Department of Environmental Quality
3019 Peters Creek Road
Roanoke, VA 24019

APPENDIX C

Clover Meadow Dairy - VPG120003 (NOT TO SCALE)



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Consent Order - Mr. H. N. Barnhart

NORTH FORK BLACKWATER RIVER

RIPARIAN BUFFER